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SACRAMENTO COURTS  
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CHARITY KENYON, SBN 078823  
RIEGELS CAMPOS & KENYON LLP  
2500 Venture Oaks Way, Suite 220  
Sacramento, CA 95833-4222  
Telephone: (916) 779-7100  
Facsimile: (916) 779-7120

STEVEN BENITO RUSSO, SBN 104858

Chief of Enforcement

LUISA MENCHACA, SBN 123842

General Counsel

WILLIAM L. WILLIAMS, JR., SBN 99581

Commission Counsel

HOLLY B. ARMSTRONG, SBN 155142

Commission Counsel

**FAIR POLITICAL PRACTICES COMMISSION**

428 J Street, Suite 620

Sacramento, CA 95814

Telephone: (916) 322-5660

Facsimile: (916) 322-1932

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,  
a state agency,

Plaintiff,

v.

AGUA CALIENTE BAND OF CAHUILLA  
INDIANS, and DOES I-XX,

Defendants.

Case No. 02AS04545

DECLARATION OF JAMES K. KNOX  
IN SUPPORT OF OPPOSITION TO  
MOTION TO QUASH

Date: December 20, 2002

Time: 2:00 p.m.

Dept: 53

Judge: Hon. Loren McMaster

Action Filed July 31, 2002

No Trial Date Set

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1 I, JAMES K. KNOX, declare:

2 1. I am the Executive Director for California Common Cause (“Common Cause”).  
3 I have been Common Cause’s Executive Director for over five and one-half years. Common  
4 Cause is a non-partisan citizens’ organization founded in 1970. Common Cause has 200,000  
5 members nationwide and 25,000 in California.

6 2. Common Cause’s goal is to ensure open, honest and effective government at the  
7 federal, state and local levels. Through publication of studies on campaign finance, sustained  
8 lobbying campaigns, and grassroots activities, Common Cause seeks to strengthen public  
9 participation and public faith in our institutions of self-government; to ensure that government  
10 and the political process serve the general interest, rather than special interests; to curb the  
11 excessive influence of money on government decision-making and public elections; and to  
12 promote fair and honest elections and high ethical standards for government officials.

13 3. In California, Common Cause sponsored Proposition 9, the successful citizens’  
14 initiative enacting the state’s fundamental law governing campaign finance and lobbyist  
15 activity disclosures - the Political Reform Act of 1974, which is set forth, as amended, in  
16 California Government Code §§ 81000, *et seq.* (the “Act” ). The Act requires public disclosure  
17 of pre-election contributions to California political candidates and committees. *See* Cal. Gov’t  
18 Code §§ 84200, *et seq.* For this disclosure, the Act implements a system of dual reporting -  
19 both the donor and the recipient must file reports. The Act also requires public disclosure of  
20 lobbying activities. *See* Cal. Gov’t Code § 86100. Under these provisions, a lobbyist’s  
21 employer must file periodic reports identifying the bill or administrative action on which its  
22 lobbyists has attempted to exert influence.

23 4. As detailed more fully below, I have extensive experience using disclosures  
24 required by the Act to document who donates and receives money in California politics. In my  
25 experience, the Act’s dual reporting requirements are essential to ensure that this system of  
26 self-reporting effectively discloses to the voting public who gives to candidates for elective  
27 office and how much those donors give. My study of those disclosures has revealed that in  
28 recent years Native American tribes - including the Agua Caliente Band of Cahuilla Indians

1 (“Agua Caliente”) - have joined the ranks of the most prolific donors to California political  
2 campaigns. My comparison of donor and recipient reports, however, reveals that Agua  
3 Caliente, and others with special interests in California’s gambling laws, repeatedly flouted the  
4 Act’s disclosure requirements. As a result, I filed two verified complaints with California’s  
5 Fair Political Practices Commission (the “FPPC”) itemizing widespread violations of the Act  
6 by those with special interests in California’s gambling industry. In response, the FPPC  
7 investigated these allegations and has filed numerous enforcement actions, including this action  
8 against Agua Caliente.

### 9 **QUALIFICATIONS**

10 5. In 1977, I graduated from Stanford University with a Bachelor of Arts in  
11 Communications. I received a Masters Degree in Public Policy from the Claremont Graduate  
12 School in 1985.

13 6. I have spent the last fourteen years studying campaign finance in California  
14 elections. Before joining Common Cause five years ago, I served for nine years as the Urban  
15 Affairs Director for the Planning and Conservation League, where I represented the statewide  
16 environmental group in, among others, the area of election and campaign reform. As Common  
17 Cause’s Executive Director during the last five years, I have served as the organization’s  
18 primary spokesperson in California; I have represented the organization before the California  
19 Legislature and the FPPC; and I have directed Common Cause’s advocacy efforts at the state  
20 and local level.

21 7. In the course of its regular effort to ensure open, honest and effective  
22 government, Common Cause conducts research to publish a bi-annual report, entitled “Capitol  
23 Investors.” The report identifies the top ten donors to California legislators and legislative  
24 campaigns during a two-year “election cycle.” (Each election cycle covers the term for  
25 members of the California Assembly.) The report also analyzes donor priorities and  
26 contribution strategies. Common Cause has published “Capitol Investors” since the 1983-84  
27 election cycle. Common Cause’s top ten lists for the last nine election cycles are attached  
28 hereto as Exhibit A.

1           8.       To collect data for the bi-annual publication of “Capitol Investors,” a team of  
2 individuals visits the California Secretary of State’s offices. The team then reviews major  
3 donor reports filed with the Secretary of State pursuant to the Act. The team collects data from  
4 these reports regarding who made the contribution, what amount the contribution totaled, and  
5 which state legislator or legislative campaign received the contribution. The team then enters  
6 this data into a computer database. Common Cause then uses the data to create a list of top ten  
7 donors and analyze donor priorities and contribution strategies.

8           9.       In the course of its regular effort to ensue open, honest and effective government,  
9 Common Cause also publishes reports on campaign contributions by particular special interest  
10 groups. These reports identify how much a particular group has contributed, how much each  
11 member of the industry contributed, who received the money, what pending legislation the  
12 industry had an interest in, and how the legislation fared. The report entitled “Stacking the  
13 Deck: Gambling Industry Emerges as Top Campaign Contributor in California,” the results of  
14 which are discussed more fully below, is one such report.

15          10.      To collect the data for these industry-specific reports, a team of individuals visits  
16 the California Secretary of State’s offices. The team then reviews major donor reports filed  
17 with the Secretary of State pursuant to the Act. It identifies reports filed by members of the  
18 designated special interest group. It collects data from those select reports regarding who made  
19 the contribution, what amount the contribution totaled, and which state legislator or legislative  
20 campaign received the contribution. The team then enters the data into a database maintained  
21 by Common Cause. As noted below, widespread underreporting within the gambling industry  
22 of contributions from 1995 through 1998 prevented Common Cause from relying on major  
23 donor reports and significantly increased the work required to compile the information  
24 necessary for “Stacking the Deck.”

25          11.      During my five years at Common Cause, I have participated in seven major  
26 reports on campaign finance in California, including the “Capitol Investors” reports for both the  
27 1997-98 and the 1999-2000 election cycles. On those projects, I served as the primary  
28 supervisor; I arranged for the data collection; I verified the accuracy of the data for the top ten

1 list by reviewing all reports filed by donors on the list, and I authored the reports. I have also  
2 participated in four reports on contributions by particular industries. In addition to reports on  
3 the tobacco, banking and energy industries, I participated in Common Cause's report on  
4 political activity of the gambling industry, *i.e.*, "Stacking the Deck." On that project, I  
5 supervised and directly assisted data collection; I verified the accuracy of the data by reviewing  
6 data collected from recipient reports by leaders in the California legislature; and I edited the  
7 final report. The other report on which I worked related to candidate fundraising in the 1996  
8 general election.

9 12. I have also managed Common Cause's campaign efforts for five statewide ballot  
10 measures: Proposition 25 (campaign finance reform), Proposition 34 (campaign finance  
11 reform), Proposition 41 (voting machine improvement bond), Proposition 43 (election law  
12 reform), and Proposition 52 (election day registration).

13 **THE CRITICAL IMPORTANCE OF DONOR REPORTS UNDER THE ACT'S DUAL**  
14 **REPORTING SYSTEM**

15 13. In support of its pending motion, Agua Caliente casually dismisses as negligible  
16 California's interest in disclosure by Agua Caliente of its donations to California political  
17 candidates and committees. According to Agua Caliente, those who received contributions  
18 from Agua Caliente made a full disclosure to the Secretary of State, so the information that it  
19 failed to disclose as required by the Act was, nevertheless, available to the public. Contrary to  
20 Agua Caliente's suggestion, the effectiveness of California's system of campaign contribution  
21 disclosure depends on dual reporting - disclosure by the "donor" and disclosure by the  
22 "recipient".

23 14. The Act's dual reporting requirement creates checks and balances in a system  
24 built on self-reporting. A recipient is obliged to report with the knowledge that if he or she  
25 does not, disclosure by the donor will enable the FPPC or members of the public to catch the  
26 omission by auditing publicly available records. The FPPC now routinely matches what the  
27 donors report giving to what the candidates report receiving. Take one side out of the equation  
28

1 and an important enforcement tool is lost, along with some of the incentive for recipients to  
2 comply - the only way to get caught is through a detailed audit of private records.

3 15. The Act's dual reporting requirement also facilitates studies by the media and  
4 members of the general public into the overall contributions made by particular donors. Under  
5 the dual reporting system, the public can easily compile this information from major donor  
6 reports. Without donor reports, the public must instead search through all recipient reports to  
7 obtain this information. As discussed below, the failure of Native American tribes to fully  
8 report their contributions forced Common Cause to do just that during a study to document  
9 contributions from all segments of the gambling industry. This additional burden transformed a  
10 six-month project into a *two-year-long study* for Common Cause's three-member team.

11 16. If Native American tribes are immune from enforcement actions under the Act,  
12 they could serve as conduits for undisclosed contributions from a variety of other sources. The  
13 people of the State of California have demanded information about who is contributing to  
14 candidates for statewide and legislative office, who is supporting statewide voter initiatives and  
15 who is employing the state's lobbyists. If any group of donors are not subject to the Act's  
16 requirements, special interests with an eye towards concealing their involvement in state  
17 politics could use this group to frustrate that compelling public interest.

18 17. In sum, there are at least three dangers if Native American tribes can evade their  
19 reporting obligations. Contribution recipients can evade disclosure of contributions from tribes  
20 more easily. The general public and the media will face greater difficulty when attempting to  
21 determine how much influence, through contributions, a major donor is exerting over  
22 California's political process. Finally, the tribes could serve as conduits for undisclosed  
23 contributions from special interests wanting to conceal their influence over California's  
24 political process.

25 **THE RECENT METEORIC RISE IN CONTRIBUTIONS BY NATIVE**  
26 **AMERICAN TRIBES**

27 18. Before the 1997-98 election cycle, Native American tribes were not among the  
28 powerful interests attempting to purchase influence in California's political process. Indeed,

1 during the preceding fifteen years, not a single tribe contributed enough to make Common  
2 Cause's list of the "Top Ten Contributors" to California's legislators and legislative campaigns.  
3 See Exh. A (Top Ten Contributors 1983-2000). In my routine review of campaign contribution  
4 recipient reports before the 1997-98 cycle, I have found contributions from Native American  
5 tribes to have been few and insubstantial.

6 19. The 1997-98 election cycle was marked by the meteoric rise in the political  
7 influence of Native American tribes in California politics. Three Native American tribes  
8 ranked among the top ten contributors to California's legislators and legislative campaigns.  
9 Agua Caliente spent \$1,214,094, making it the third largest contributor in the state. The  
10 Morongo Band of Mission Indians ranked second with \$1,416,713, and the San Manuel Band  
11 of Mission Indians ranked seventh with \$1,028,064. In total, these three tribes contributed  
12 more than that contributed by three of the traditional powerhouses in California politics - the  
13 associations representing California's teachers, doctors and trial lawyers. In only one election  
14 cycle, these three tribes went from being invisible to combining to be far and away the largest  
15 contributors to California legislative campaigns.

16 20. The bulk of the contributions by Native American tribes during the 1997-98  
17 election cycle, however, went to support Proposition 5 on California's November 3, 1998  
18 General Election ballot. Proposition 5 was a tribal gaming initiative, which the Native  
19 American tribes sponsored and Nevada gaming interests opposed. In this battle between  
20 special interests for the general public's vote, these powerful, competing interests spent \$92  
21 million collectively to qualify, support and oppose the initiative. The level of spending on this  
22 proposition alone was more than on any other proposition, in 1998, in California history or in  
23 the history of any other state. In total, Native American tribes spent over \$60 million in support  
24 of the initiative, with Agua Caliente contributing \$2,316,775.

25 21. The Secretary of State's report on campaign contributions relating to Proposition  
26 5, among other initiatives on the November 1998 General Election ballot, is attached hereto as  
27 Exhibit B. The Secretary of State's report is consistent with data that Common Cause collected  
28 from disclosures required by the Act. Before the November 1998 vote, Common Cause

1 collected data on contributions relating to all propositions on the ballot and posted that  
2 information on the Internet in order to educate voters before they cast their ballots.

3 22. During the 1999-2000 election cycle, the total contributed by the top ten donors  
4 to California's legislators and legislative campaigns rose by 18 percent. Despite this increase in  
5 spending, Agua Caliente stayed on the list. It contributed \$1,050,805, making it the ninth  
6 largest donor in the state.

7 23. Common Cause has not yet conducted a review of Agua Caliente's contributions  
8 for the 2001-02 election cycle. The limited disclosures that Agua Caliente has made available  
9 on its Internet site, which is at <http://www.aguacaliente.org>, demonstrate that Agua Caliente  
10 continues to spend significant sums to influence California politics. Agua Caliente's major  
11 donor report reflects total expenditures and contributions of \$426,000 from January 2002  
12 through June 2002. Agua Caliente's most recent report on its activities as a lobbyist employer  
13 states that Agua Caliente has paid its lobbyists \$390,571.04 since January 1, 2001. Excerpts of  
14 these reports, as posted on Agua Caliente's Internet site, are attached hereto as Exhibit C.

15 24. In sum, during one election cycle four years ago, Native American tribes rapidly  
16 emerged as one of California's perennial special interest powerhouses. Agua Caliente has  
17 remained as one of the most prolific political givers in California. Collectively, Native  
18 American tribes give significantly more to California political campaigns than any of  
19 traditional largest donors - more than teachers, more than doctors, more than trial lawyers.

20 **WIDESPREAD VIOLATIONS OF THE ACT BY THE TRIBE AND OTHERS IN THE**  
21 **GAMBLING INDUSTRY**

22 25. In 1997, my review of campaign contribution recipient reports uncovered an  
23 increasing number of contributions from gaming interests. In response to the industry's  
24 increasing level of spending on California elections, I decided to direct a Common Cause study  
25 to document just how significant a role gaming interests were playing in California politics.

26 26. After a two-year investigation, Common Cause published the results of its study  
27 in a report entitled "Stacking the Deck." The results showed that the industry exerted  
28 significant influence in California's political process. From 1995 through 1998, the gambling



1 industry as a whole spent \$15,783,060 on campaign contributions to California's statewide and  
2 legislative candidates. The total was greater than that contributed by the state's four largest  
3 political donors - the California Teachers Association, the California Correctional Peace  
4 Officers Association, the Consumer Attorneys of California, and the California Medical  
5 Association - over the same time period. Native American tribes gave fifty-three percent of the  
6 near \$16 million contributed by the gambling industry. As a whole, the industry gave markedly  
7 more money in 1998 than in any other year covered by the study. The single largest factor for  
8 this increase was the escalation of contributions from Native American tribes and the  
9 subsequent increase in contributions it promoted from their gaming rivals.

10         27. At the outset of its investigation, Common Cause estimated that the study would  
11 take its staff six months to complete, under the hope that it could simply search through major  
12 donor reports, identify reports filed by gaming interests, and collect information from those  
13 reports. The study, however, took two years to complete, because of under reporting by Agua  
14 Caliente and by other members of the gambling industry. The lack of compliance with the  
15 Act's reporting requirements proved to be a tremendous obstacle in compiling data for the  
16 study. Common Cause had to review the sets of recipient reports filed by over 500 candidates  
17 for the legislature and statewide offices to obtain the results of its study.

18         28. Having had to look through all of the recipient reports after researching all  
19 available donor reports, Common Cause decided to compare the relevant recipient and donor  
20 reports. Common Cause found over 300 discrepancies between the gambling-industry donor  
21 and recipient reports. The level of non-compliance with the Act was more widespread than  
22 Common Cause had ever before documented.

23         29. On June 5, 2000, Common Cause filed a verified complaint with the FPPC. The  
24 complaint documented the discrepancies Common Cause discovered. Among myriad  
25 violations by others in the gambling industry, Agua Caliente failed to report contributions  
26 totaling \$271,266 during 1998. A list itemizing Agua Caliente violations during 1998 is  
27 attached hereto as Exhibit D. In its complaint, Common Cause respectfully requested the FPPC  
28 to investigate the discrepancies and to take appropriate action. The FPPC's enforcement action

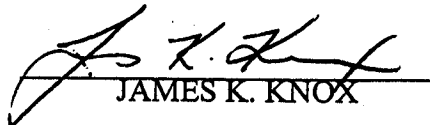
1 pending before this court is but one among many resulting from Common Cause's June 2000  
2 administrative complaint. The FPPC has brought enforcement actions and obtained fines with  
3 respect to the vast majority of discrepancies involving donor reports from other interested  
4 members of the gambling industry.

5 **THE TRIBE'S CONTINUING VIOLATIONS OF THE ACT**

6 30. In support of its motion currently pending before this Court, Agua Caliente  
7 asserts that it voluntarily complies with the Act. Not only is the assertion irrelevant, as  
8 enforcement actions would be unnecessary if it were true, but it simply is not true. Indeed, on  
9 March 18, 2002, Common Cause filed a second complaint with the FPPC for further violations  
10 of the Act by Agua Caliente. During 2001, Agua Caliente spent in excess of \$300,000 on  
11 lobbying activities, but did not report on what bills it lobbied. That omission is a violation of  
12 the Act, under Government Code section 86116(d). Agua Caliente's quarterly lobbyist reports  
13 for 2001 are attached hereto as Exhibit E.

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct.

16 Executed on the 10<sup>th</sup> day of December 2002 at Sacramento, California.

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18   
19 JAMES K. KNOX  
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